

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.:

Rose Maio and
Michael Maio,

Plaintiffs,

v.

TD Bank, N.A.,

Defendant.

RECEIVED

11/16/2021

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COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

- I. The Plaintiff, Rose Maio, is an individual with a residential address of 5 Curtis Road, Peabody, Essex County, Massachusetts.
- II. The Plaintiff, Michael Maio, is an individual with a residential address of 5 Curtis Road, Peabody, Essex County, Massachusetts.
- III. The Defendant TD Bank, N.A. ("TD") is a national bank with headquarters in Portland, Maine and Cherry Hill, New Jersey and regularly conducts business in Middlesex County, Massachusetts.

FACTS

1. TD Bank, N.A. ("TD") is a multinational bank with 290 stores and ATMs in Massachusetts alone.
2. TD is a business engaged in trade and commerce in Massachusetts.
3. TD is aware of phishing scams and educates its staff to detect and prevent customers from falling victim to such scams when possible.¹

¹ <https://www.td.com/us/en/personal-banking/security-center/scam-phishing/>

4. TD trains its tellers to detect common scams and intervene when possible.
5. TD is aware that elderly customers are more likely to fall victim to phishing scams.
6. TD trains its staff to become suspicious of possible scams when customers suddenly ask to transfer large sums of money internationally.
7. Michael and Rose Maio (“the Maios”) have been customers of TD for over a decade.
8. The Maios are presently retired octogenarians.
9. On August 20, 2020, the Maios received an email from NTS IT Care (“NTS”), an organization claiming to be an IT company who also claimed that the Maios had an account with them.
10. NTS is not an IT company, but rather a fake entity used to facilitate a consumer scam upon the Maios.
11. NTS claimed to have withdrawn funds for a subscription fee from the Maio’s bank account.
12. NTS informed the Maios that to process a refund they needed access to their computer.
13. The Maios gave NTS access to their computer to process a reimbursement.
14. NTS informed the Maios that while processing the reimbursement, NTS accidentally transferred \$40,000 into the Maio’s bank account, their TD bank account.
15. The Maios, knowing they were not entitled to \$40,000, and knowing this money was sent in error, agreed to help transfer it back.
16. An agent of NTS then provided the Maios with wire instructions to send the \$40,000 back to NTS.
17. Michael Maio (“Michael”) accompanied by his daughter, Sandra Maio (“Sandra”), went to TD’s branch office at 79 Lynnfield Street in Peabody, MA on August 20, 2020, to return the funds from his checking account at TD ending in 4422.
18. Sandra and Michael sought the assistance of a TD bank teller and asked to initiate a wire transfer.
19. The TD bank teller asked Michael and Sandra why they were sending the money and Sandra explained that money had been inadvertently sent to her parents and they were initiating the transfer to send the money back.
20. Michael asked the TD bank teller to confirm that the Maios had enough money in their checking account ending in 4422 to initiate the wire transfer.

21. The TD bank teller confirmed that there were presently more than enough funds were in their checking account 4422 and conducted no further inquiry.
22. The wire transfer was authorized by TD and \$39,500 was transferred from the Maio's TD bank account ending in 4422 to an account with the Bangkok Bank in Lat Phrao, Thailand, numbered 008-007448-7.²
23. Prior to August 20, 2020, the Maios had never sent money internationally.
24. On August 21, 2020, the Maios received a call from NTS and were informed that two more erroneous transfers of money had been deposited into the Maio's TD checking account, totaling \$100,000.
25. NTS requested that the Maios effectuate two more transfers of \$49,500 each to return the money.³
26. On August 21, 2020, Rose Maio ("Rose") and Sandra went to the TD branch located at 174 Newbury Turnpike, Rowley, MA and again asked a TD bank teller to help them transfer \$99,000 (two wire transfers of \$49,500).
27. The TD bank teller asked why they were initiating this transfer and the Maios explained that \$100,000 had been erroneously transferred into their account by a business.
28. The Maios explained that the funds had been sent in error and they needed to send them back to the business which TD knew was a foreign entity by virtue of the nature of the wire transfer instructions.
29. They told the TD bank teller that this was the second time this had happened, and the TD bank teller commented that it was odd that a business would make such a significant mistake but the teller failed to ask any questions about the transfer.
30. The Maios believed they only authorized transfers from their TD checking account ending in 4422.
31. The TD bank teller then helped the Maios fill out the wire transfer form and the Maios made two wire transfers of \$49,500 each to two accounts numbered 2034242921 and 2034242947, which were both held by the Bangkok Bank in Lat Phrao, Thailand.

² It was agreed that the Maios would transfer \$39,500 and not \$40,000 to account for the expense of the wire transfer and the fake reimbursement.

³ As with the prior transfer, \$500 per transfer was agreed to as a convenience expense as requested by NTS.

32. The Maios later learned that their TD checking account ending in 4422 had been exhausted in the first wire on August 20, 2020, and the August 21, 2020, wire transfers, without their knowledge or consent, drew from a predominantly unused Home Equity Line of Credit (HELOC) that they had with TD – not the checking account ending in 4422.
33. These two wire transfers exhausted their HELOC.
34. On August 25, 2020, the Maios were informed that NTS had “accidentally” deposited another \$40,000 into the Maios’ account.
35. Michael, Rose, and Sandra went to the TD Peabody branch location planning to make another wire transfer.
36. On August 25, 2020, they were helped by an assistant manager identified as “Rich.”
37. The Maios again asked to initiate a wire transfer and Rich asked why they were transferring money.
38. The Maios again explained that a business had accidentally transferred money into their TD bank account, and they were trying to wire the money back to the business.
39. Michael asked Rich if the \$40,000 had been transferred into their account and the assistant manager advised Michael that the money was in a pending status and had not posted into their account.
40. This was the first time the Maios were told by anyone that the money could show in their account as merely “pending.”
41. Rich explained to the Maios that money in a pending status could not be withdrawn by the Maios because it could be called back by the transferring entity.
42. This was the first time the Maios were told that any of the money that had been confirmed by various TD employees was in any way pending. The assistant manager advised the Maios not do anything until the \$40,000 posted into their account. Based upon this information, the Maios withdrew their request to transfer funds.
43. At this time, the Maios were in a great deal of distress and were deeply shocked by the information they had received from Rich and were beginning to realize they may have fallen for a scam.
44. They were upset that after initiating three wire transfers, Rich was the first TD employee to tell them the money they believed they were transferring back to Thailand had never actually posted to their account.
45. Upon returning home, the Maios reached out to NTS and the representative from NTS got aggressive and demanded that the Maios go initiate the transfer.

46. Armed with the information from Rich, the Maios refused.
47. On August 26, 2020, Michael, Rose, and Sandra went to TD's branch in Peabody to investigate the matter further.
48. They met with a supervisor named "Jordan" and Rich, the assistant manager, and together they all realized that the Maios had been the victims of a scam.
49. The money that the TD bank tellers were reporting was in their TD checking account never consisted of any proceeds from any other source that had been transferred to the Maios.
50. In total, \$138,650 had been stolen from their TD accounts.
51. The "pending" transaction referenced by Rich on August 25, 2020, never cleared.
52. At the August 26, 2020 meeting, the Maios first became aware that their HELOC with TD had been exhausted. Upon learning this, the Maios were devastated. They realized their life savings had been nearly obliterated.
53. Jordan and Rich assured the Maios that TD would conduct a fraud investigation and they asked the Maios to file a police report.
54. On August 26, 2020, after TD promised to open a fraud investigation, Michael, Rose, and Sandra went to the Peabody Police Department to report what had happened.
55. While speaking with police officers, Rose became so emotional, she had to leave the meeting.
56. The Maios continued to follow up with TD on their internal fraud investigation.
57. TD concluded its investigation with a simple phone call telling Rose that TD determined that TD had no responsibility for what happened to them.
58. TD's conduct deviated from the minimum standard of care of a licensed bank.
59. TD failed to notify the Maios that the NTS deposits were pending and had not posted into their account.
60. TD failed to notify the Maios that no money had been transferred into their account from an outside source until after it became clear the Maios had been scammed.
61. TD failed to notify the Maios that despite making transfers from their checking account, that they were also drawing down their HELOC account.

62. TD failed to recognize large international wire transfers on an account with no history of such transfers as suspicious and failed to determine, prior to transferring money from the Maio's accounts to a foreign account, that proceeds from a foreign entity had never been actually deposited into the Maio's accounts at any time.
63. TD failed to act in a timely manner to freeze the wire transfers in Bank of Bangkok and call back the Maio's money.
64. TD's internal investigation was not conducted in good faith.
65. Before concluding its internal fraud investigation, TD sent the Maios a collection notice for late payment of their HELOC despite assuring the Maios verbally that they would not need to pay the HELOC until the investigation was concluded.
66. The emotional impact this has taken on Michael and Rose is incalculable.
67. The Maio's have lost most of their life savings, lost sleep, and have suffered anxiety and depression as a direct result of TD bank's failures.
68. On February 21, 2020, the Massachusetts Securities Division amended its articles to include 12.207: Fiduciary Duty of Broker-Dealers and Agents. In sum, this regulation imposes upon TD fiduciary obligations to its customers.
69. TD owed the Maios a fiduciary duty with respect to the subject wire transfers.
70. TD owed the Maios a general fiduciary duty of care.
71. TD owed the Maios a fiduciary duty of full disclosure.
72. On two separate occasions involving three wire transfers to a foreign bank, TD bank tellers failed to inform the Maios that no proceeds from a foreign entity have ever been transferred into their checking account.
73. On two separate occasions, TD's bank tellers failed to inform the Maios that they were transferring money from their HELOC.
74. On two separate occasions the Maios were assured by the TD bank tellers that the Maios had the money in their checking account to cover the wire transfers.
75. A M.G.L. c. 93A demand letter was sent to TD bank by the Maios on June 8, 2021.
76. TD bank responded to the M.G.L. c. 93A demand letter on August 4, 2021 by denying liability.
77. All conditions precedent to this action have occurred.

FIRST CAUSE OF ACTION

78. The first cause of action is an action by Rose Maio Against TD Bank, N.A. for Breach of Fiduciary Duties.

SECOND CAUSE OF ACTION

79. The second cause of action is an action by Michael Maio against TD Bank, N.A. for Breach of Fiduciary Duties.

THIRD CAUSE OF ACTION

80. The third cause of action is an action by Rose Maio against TD Bank, N.A. for negligence resulting in property loss and emotional distress.

FOURTH CAUSE OF ACTION

81. The fourth cause of action is an action by Michael Maio against TD Bank, N.A. for negligence resulting in property loss and emotional distress.

FIFTH CAUSE OF ACTION

82. The fifth cause of action is an action by Rose Maio against TD Bank, NA for gross negligence resulting in property loss and emotional distress.

THE SIXTH CAUSE OF ACTION

83. The sixth cause of action is an action by Michael Maio against TD Bank, NA for gross negligence resulting in property loss and emotional distress.

THE SEVENTH CAUSE OF ACTION

84. The seventh cause of action is an action by Rose Maio against TD Bank N.A. for the reckless infliction of emotional distress.

THE EIGHTH CAUSE OF ACTION

85. The eight cause of action is an action by Michael Maio against TD Bank N.A. for the reckless infliction of emotional distress.

THE NINTH CAUSE OF ACTION

86. The ninth cause of action is an action by Rose Maio against TD Bank N.A. for the intentional infliction of emotional distress.

THE TENTH CAUSE OF ACTION

87. The tenth cause of action is an action by Michael Maio against TD Bank N.A. for the intentional infliction of emotional distress.

THE ELEVENTH CAUSE OF ACTION

88. The ninth cause of action is an action by Rose Maio against TD Bank, N.A. for violation of M.G.L. c. 93A.

THE TWELFTH CAUSE OF ACTION

89. The tenth cause of action is an action by Michael Maio against TD Bank, N.A. for violation of M.G.L. c. 93A.

DEMANDS FOR RELIEF

WHEREFORE, the Plaintiffs, Rose Maio and Michael Maio, demand judgment against the Defendant, TD Bank, N.A., for all damages alleged in an amount that is fair, together with interest and costs and such other relief as is just and appropriate. On the eleventh and twelfth causes of action, the Plaintiffs also demand double or treble damages, attorney's fees and costs.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS

Respectfully submitted,

ROSE MAIO AND MICHAEL MAIO,
By their attorneys,

/s/ Benjamin T. Carroll

Benjamin T. Carroll BBO# 703280
Mark D. Horan BBO# 545487
Kenney & Conley, P.C.
100 Grandview Road, Suite 218
Post Office Box 9139
Braintree, MA 02185-9139
781-848-9891
benjamin@kenneyconley.com
mark@kenneyconley.com

Dated: November 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon the attorney of record for each other party via first class mail on this 16th day of November 2021.

/s/ Benjamin T. Carroll

Benjamin T. Carroll BBO# 703280